IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3913 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NILESH @ BHURIO RANCHHODDAS LAKADAWALA

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

MR KT DAVE AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 31/01/2000

ORAL JUDGEMENT

#. Heard Mr.Anil S.Dave, learned advocate for the petitioner and Mr.K.T.Dave, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 20-5-99 passed by

respondent No. 1 - The Commissioner of Police, Surat against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present proceedings under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure-C interalia indicates that two prohibition cases were registered against the petitioner at Prohibition Station North Division police station on 4-11-98 and 22-2-1999. That in both cases, the Indian made Foreign liquor was seized from the possession of the petitioner / detenu. That the case registered vide C.R. No : 1313 of 1998 is pending for trail while the case registered vide C.R. No : 283/99 is pending for investigation. The petitioner was released on bail in both these cases on 23-2-1999. Over and above that two witnesses on assurance of their anonymity have given statement against the petitioner dated 2-5-99 and 8-5-1999 wherein, the incidents alleged to have occurred on 18-3-99 and 14-4-99 are referred. That the said statements are verified by the detaining authority on 18-5-1999. That on the basis of the aforesaid material, the respondent No.1 as the detaining authority has come to the conclusion that the petitioner is a dangerous person within the meaning of Section 2(c) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his anti social activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that while passing the impugned order, has failed to consider the availability of less drastic remedy like claiming of cancellation of bail though available under Section 437(5) of the CrPC and thereby, the subjective satisfaction reached by the detaining authority has been vitiated and has rendered the impugned order invalid.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention

order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. In the instant case, on scrutiny of papers, it appears that the detaining authority has failed to state any facts in the grounds of detention whether cancellation of bail was considered to prevent the detenu or not. Instead of the same, it has been observed that the petitioner having been released on bail, is likely to continue his bootlegging activities and as such, the detention order is necessary. The above stated statement of detaining authority in the grounds of detention discloses non application of mind which has vitiated the subjective satisfaction reached by the detaining authority which has rendered the impugned order invalid.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 20-5-99 passed by respondent No. 1 - The Commissioner of Police, Surat against the petitioner is hereby quashed and set aside. The petitioner - Nilesh alias Bhurio Ranchhodas Lakadawala is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 31-1-2000 [A.K.Trivedi, J.]

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